

ASSEMBLY BILL

No. 1734

Introduced by Assembly Member Jones-Sawyer

February 14, 2014

An act to add Section 14838.8 to the Government Code, to amend Sections 999, 999.1, 999.2, 999.5, 999.12, and 1104 of the Military and Veterans Code, and to amend Sections 10115, 10115.13, and 10115.15 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1734, as introduced, Jones-Sawyer. Public contracts: small business participation: disabled veterans.

(1) The Small Business Procurement and Contract Act requires the Director of General Services and the heads of other state agencies that enter into contracts for the provision of goods, services, and information technology and for the construction of state facilities to establish goals for the participation of small businesses in these contracts, to provide for small business preference in the award of these contracts, to give special consideration and special assistance to small businesses, and, whenever possible, to make awards to small businesses, as specified.

This bill would require all state agencies, departments, boards, and commissions to establish and achieve an annual goal of 25% small business participation in state procurements and contracts, to ensure that the state's procurement and contract processes are administered in order to meet or exceed the goal, and to report to the Director of General Services statistics regarding small business participation in his or her agency's procurements and contracts.

The bill would require the Department of General Services to monitor the progress of the agencies toward meeting the goal and to provide this information to the Office of Small Business Advocate.

The bill would also require a state agency, department, board, or commission that has not achieved the goal by the close of the fiscal year to submit an implementation and corrective action plan to the Department of General Services within 45 days and every year thereafter as long as that agency fails to meet or exceed the goal. The bill would require the department, in collaboration with the Office of Small Business Advocate, to undertake reasonable means to assist agencies in improving small business participation in their contracting.

The bill would require all state agencies, departments, boards, and commissions to work with the department to help small businesses market their products, goods, and services to the state by providing access to information about current bid opportunities on their Internet Web sites.

The bill would also require the Office of Small Business Advocate within the Governor's Office of Business and Economic Development to collaborate with the Department of General Services to cooperatively enhance the state's small business program by helping small businesses access capital and other financial resources necessary to successfully fulfill state contracts.

The bill applies to all state public entities that receive state public funding, including the California State University, the University of California, and the California Community Colleges. In calculating the total amount of contracting covered by this bill, the California State University, the University of California, and the California Community Colleges will only be required to meet the 25% goal for state funding used in contracting.

(2) Existing law requires a state agency, department, officer, or other state governmental entity, to meet an annual statewide participation goal of not less than 3% for disabled veteran business enterprises for specified contracts entered into by the awarding department during the year.

This bill would increase that participation goal to 5%.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14838.8 is added to the Government
2 Code, to read:

3 14838.8. In order to encourage small business participation in
4 state contracts, all state agencies, departments, boards, and
5 commissions shall establish and achieve an annual goal of 25
6 percent small business participation in state procurements and
7 contracts.

8 (a) Notwithstanding any other provision of this chapter, the
9 heads of all state agencies, departments, boards, and commissions
10 shall ensure that the state's procurement and contract processes
11 are administered in order to meet or exceed the 25 percent small
12 business participation goal, and shall report to the Director of
13 General Services statistics regarding small business annual
14 participation in his or her agency's procurements and contracts.

15 (b) The Department of General Services shall monitor the
16 progress of all state agencies, departments, boards, and
17 commissions toward meeting the 25 percent small business
18 participation goal. The department shall regularly share information
19 with the Office of Small Business Advocate on the progress of
20 each individual agency, department, board, and commission in
21 meeting the annual goal, including, but not limited to, providing
22 copies of corrective action plans.

23 (c) (1) A state agency, department, board, or commission that
24 has not achieved the 25 percent small business participation goal
25 by the close of the fiscal year shall submit an implementation and
26 corrective action plan to the Department of General Services within
27 45 days and annually thereafter as long as that agency fails to meet
28 or exceed the goal.

29 (2) The Department of General Services, in collaboration with
30 the Office of Small Business Advocate, shall undertake reasonable
31 means to assist agencies in improving small business participation
32 in their contracting, including entering into memoranda of
33 understanding with the agencies that have not met the goal to
34 improve performance.

35 (d) All state agencies, departments, boards, and commissions
36 shall use the contracting procedure authorized in Section 14838
37 to contract with small businesses for goods and services contracts
38 under one hundred thousand dollars (\$100,000) and construction

1 contracts under one hundred twenty thousand dollars (\$120,000)
2 whenever possible.

3 (e) The Department of General Services shall actively promote
4 small business certification, help small businesses market their
5 products, goods, and services to the state, and promote the use of
6 technologies and other innovative solutions for notifying small
7 businesses of state contracting opportunities, including, but not
8 limited to, the Subscription Outreach Service of the California
9 State Contracts Register.

10 (f) The Department of General Services shall collaborate with
11 the Office of the Small Business Advocate in the office's work to
12 assist small businesses access capital and other financial resources
13 necessary to successfully fulfill state contracts.

14 (g) This section applies to all state agencies, departments,
15 boards, commissions, and other state public entities that receive
16 state funding including the University of California, the California
17 State University, and the California Community Colleges. In
18 calculating the total amount of contracting covered by this section,
19 the University of California, the California State University, and
20 the California Community Colleges shall only be required to meet
21 the 25 percent-goal for state funding used in contracting.

22 SEC. 2. Section 999 of the Military and Veterans Code is
23 amended to read:

24 999. (a) This article shall be known as, and may be cited as,
25 the California Disabled Veteran Business Enterprise Program. The
26 California Disabled Veteran Business Enterprise Program is
27 established to address the special needs of disabled veterans
28 seeking rehabilitation and training through entrepreneurship and
29 to recognize the sacrifices of Californians disabled during military
30 service. It is the intent of the Legislature that every state
31 procurement authority honor California's disabled veterans by
32 taking all practical actions necessary to meet or exceed the disabled
33 veteran business enterprise participation goal of a minimum of-3
34 5 percent of total contract value.

35 (b) As used in this article, the following definitions apply:

36 (1) "Administering agency" means the Treasurer in the case of
37 contracts for professional bond services, and the Department of
38 General Services' Office of Small Business and Disabled Veteran
39 Business Enterprise Services, in the case of contracts governed by
40 Section 999.2.

1 (2) "Awarding department" means a state agency, department,
2 governmental entity, or other officer or entity empowered by law
3 to issue bonds or enter into contracts on behalf of the state.

4 (3) "Bonds" means bonds, notes, warrants, certificates of
5 participation, and other evidences of indebtedness issued by, or
6 on behalf of, the state.

7 (4) "Contract" includes any agreement or joint agreement to
8 provide professional bond services to the State of California or an
9 awarding department. "Contract" also includes any agreement or
10 joint development agreement to provide labor, services, materials,
11 supplies, or equipment in the performance of a contract, franchise,
12 concession, or lease granted, let, or awarded for, and on behalf of,
13 the state.

14 (5) (A) "Contractor" means any person or persons, regardless
15 of race, color, creed, national origin, ancestry, sex, marital status,
16 disability, religious or political affiliation, age, or any sole
17 proprietorship, firm, partnership, joint venture, corporation, or
18 combination thereof that submits a bid and enters into a contract
19 with a representative of a state agency, department, governmental
20 entity, or other officer empowered by law to enter into contracts
21 on behalf of the state. "Contractor" includes any provider of
22 professional bond services who enters into a contract with an
23 awarding department.

24 (B) "Disabled veteran business enterprise contractor,
25 subcontractor, or supplier" means any person or entity that has
26 been certified by the administering agency pursuant to this article
27 and that performs a "commercially useful function," as defined
28 below, in providing services or goods that contribute to the
29 fulfillment of the contract requirements:

30 (i) A person or an entity is deemed to perform a "commercially
31 useful function" if a person or entity does all of the following:

32 (I) Is responsible for the execution of a distinct element of the
33 work of the contract.

34 (II) Carries out the obligation by actually performing, managing,
35 or supervising the work involved.

36 (III) Performs work that is normal for its business services and
37 functions.

38 (IV) Is responsible, with respect to products, inventories,
39 materials, and supplies required for the contract, for negotiating

1 price, determining quality and quantity, ordering, installing, if
2 applicable, and making payment.

3 (V) Is not further subcontracting a portion of the work that is
4 greater than that expected to be subcontracted by normal industry
5 practices.

6 (ii) A contractor, subcontractor, or supplier will not be
7 considered to perform a “commercially useful function” if the
8 contractor’s, subcontractor’s, or supplier’s role is limited to that
9 of an extra participant in a transaction, contract, or project through
10 which funds are passed in order to obtain the appearance of a
11 disabled veteran business enterprise participation.

12 (6) “Disabled veteran” means a veteran of the military, naval,
13 or air service of the United States, including, but not limited to,
14 the Philippine Commonwealth Army, the Regular Scouts, “Old
15 Scouts,” and the Special Philippine Scouts, “New Scouts,” who
16 has at least a 10-percent service-connected disability and who is
17 domiciled in the state.

18 (7) (A) “Disabled veteran business enterprise” means a business
19 certified by the administering agency as meeting all of the
20 following requirements:

21 (i) It is a sole proprietorship at least 51 percent owned by one
22 or more disabled veterans or, in the case of a publicly owned
23 business, at least 51 percent of its stock is unconditionally owned
24 by one or more disabled veterans; a subsidiary that is wholly owned
25 by a parent corporation, but only if at least 51 percent of the voting
26 stock of the parent corporation is unconditionally owned by one
27 or more disabled veterans; or a joint venture in which at least 51
28 percent of the joint venture’s management, control, and earnings
29 are held by one or more disabled veterans.

30 (ii) The management and control of the daily business operations
31 are by one or more disabled veterans. The disabled veterans who
32 exercise management and control are not required to be the same
33 disabled veterans as the owners of the business.

34 (iii) It is a sole proprietorship, corporation, or partnership with
35 its home office located in the United States, which is not a branch
36 or subsidiary of a foreign corporation, foreign firm, or other
37 foreign-based business.

38 (B) Notwithstanding subparagraph (A), after the death or the
39 certification of a permanent medical disability of a disabled veteran
40 who is a majority owner of a business that qualified as a disabled

1 veteran business enterprise prior to that death or certification of a
2 permanent medical disability, and solely for purposes of any
3 contract entered into before that death or certification, that business
4 shall be deemed to be a disabled veteran business enterprise for a
5 period not to exceed three years after the date of that death or
6 certification of a permanent medical disability, if the business is
7 inherited or controlled by the spouse or child of that majority
8 owner, or by both of those persons.

9 (8) “Foreign corporation,” “foreign firm,” or “foreign-based
10 business” means a business entity that is incorporated or has its
11 principal headquarters located outside the United States of
12 America.

13 (9) “Goal” means a numerically expressed objective that
14 awarding departments and contractors are required to make efforts
15 to achieve.

16 (10) “Management and control” means effective and
17 demonstrable management of the business entity.

18 (11) “Professional bond services” include services as financial
19 advisers, bond counsel, underwriters in negotiated transactions,
20 underwriter’s counsel, financial printers, feasibility consultants,
21 and other professional services related to the issuance and sale of
22 bonds.

23 SEC. 3. Section 999.1 of the Military and Veterans Code is
24 amended to read:

25 999.1. (a) (1) Notwithstanding any other provision of law,
26 each awarding department shall have annual statewide participation
27 goals of not less than ~~3~~ 5 percent for disabled veteran business
28 enterprises for contracts entered into by the awarding department
29 during the year for professional bond services. This section shall
30 not apply if a contract for professional bond services of an
31 underwriter is to be obtained by competitive bid. However, each
32 awarding department shall establish goals for contracts to be
33 obtained by competitive bid for professional bond services.

34 (2) These goals shall apply to the overall dollar amount
35 expended by the awarding department with respect to the contracts
36 for professional bond services relating to the issuance of bonds by
37 the awarding department, including amounts spent as underwriter’s
38 discounts.

39 (b) In attempting to meet the goals set forth in subdivision (a),
40 the awarding department shall consider establishing cocounsel,

1 joint venture, and subcontracting relationships, including disabled
2 veteran business enterprises, in all contracts for professional bond
3 services. It shall be the responsibility of the head of each awarding
4 department to be supportive of the Treasurer's program for
5 assigning representative portions of professional bond services
6 contracts for purposes of meeting the goals established pursuant
7 to this section. However, nothing in this article shall preclude the
8 awarding department from achieving the goals set forth in this
9 section without requiring joint ventures, cocounsel, or
10 subcontracting arrangements.

11 (c) This section shall not limit the ability of any awarding
12 department to meet a goal higher than those set forth in subdivision
13 (a) for the participation of disabled veteran business enterprises
14 in contracts awarded by the awarding department.

15 SEC. 4. Section 999.2 of the Military and Veterans Code is
16 amended to read:

17 999.2. (a) Notwithstanding any other provision of law,
18 contracts awarded by any state agency, department, officer, or
19 other state governmental entity, including school districts when
20 they are expending state funds for construction, professional
21 services (except those subject to Chapter 6 (commencing with
22 Section 16850) of Part 3 of Division 4 of Title 2 of the Government
23 Code), materials, supplies, equipment, alteration, repair, or
24 improvement shall have statewide participation goals of not less
25 than 5 percent for disabled veteran business enterprises. These
26 goals apply to the overall dollar amount expended each year by
27 the awarding department.

28 (b) For purposes of this section:

29 (1) "Broker" or "agent" means any individual or entity, or any
30 combination thereof, that does not have title, possession, control,
31 and risk of loss of materials, supplies, services, or equipment
32 provided to an awarding department, unless one or more certified
33 disabled veterans has 51 percent ownership of the quantity and
34 value of the materials, supplies, services, and of each piece of
35 equipment provided under the contract.

36 (2) "Equipment" means any piece of equipment that is used or
37 provided for rental to any state agency, department, officer, or
38 other state governmental entity, including equipment for which
39 operators are provided.

1 (3) "Equipment broker" means any broker or agent who rents
2 equipment to an awarding department.

3 (c) A disabled veteran business enterprise that rents equipment
4 to an awarding department shall be deemed to be an equipment
5 broker unless one or more disabled veterans has 51-percent
6 ownership of the quantity and the value of each piece of equipment.
7 If the equipment is owned by one or more disabled veterans, each
8 disabled veteran owner shall, prior to performance under any
9 contract, submit to the awarding department a declaration signed
10 by the disabled veteran owner stating that the owner is a disabled
11 veteran and providing the name, address, telephone number, and
12 tax identification number of the disabled veteran owner. Each
13 disabled veteran owner shall submit his or her federal income tax
14 returns to the administering agency pursuant to subdivision (g) as
15 if he or she were a disabled veteran business enterprise. The
16 disabled veteran business enterprise of a disabled veteran owner
17 who fails to submit his or her tax returns will be deemed to be an
18 equipment broker.

19 (d) A disabled veteran business enterprise that rents equipment
20 to an awarding department shall, prior to performing the contract,
21 submit to the awarding department a declaration signed by each
22 disabled veteran owner and manager of the enterprise stating that
23 the enterprise obtained the contract by representing that the
24 enterprise was a disabled veteran business enterprise meeting and
25 maintaining all of the requirements of a disabled veteran business
26 enterprise. The declaration shall include the name, address,
27 telephone number, and tax identification number of the owner of
28 each piece of equipment identified in the contract.

29 (e) State funds expended for equipment rented from equipment
30 brokers pursuant to contracts awarded under this section shall not
31 be credited toward the ~~3-percent~~ *5-percent* goal.

32 (f) A disabled veteran business enterprise that is a broker or
33 agent and that obtains a contract pursuant to subdivision (a) shall,
34 prior to performing the contract, disclose to the awarding
35 department that the business is a broker or agent. The disclosure
36 shall be made in a declaration signed and executed by each disabled
37 veteran owner and manager of the enterprise, declaring that the
38 enterprise is a broker or agent, and identifying the name, address,
39 and telephone number of the principal for whom the enterprise is
40 acting as a broker or agent.

(g) (1) A disabled veteran business enterprise, and each owner thereof, shall, at the time of certification, submit to the administering agency complete copies of the enterprise's federal income tax returns for the three previous tax years.

(2) A disabled veteran business enterprise, and each owner thereof, shall submit to the administering agency complete copies of the enterprise's federal income tax returns that have a postcertification due date, on or before the due date, including extensions.

(3) A disabled veteran business enterprise that, and each owner thereof who, has not submitted to the administering agency complete copies of the enterprise's federal income tax returns for the three tax years preceding certification nor for each postcertification tax year for which a return was required to be filed, shall have 90 days to submit those returns.

(4) A disabled veteran business enterprise that fails to comply with any provision of this subdivision shall be prohibited from participating in any state contract until the disabled veteran business enterprise complies with the provisions of this subdivision. Funds expended involving a disabled veteran business enterprise during any period in which that enterprise is not in compliance with the provisions of this subdivision shall not be credited toward the awarding department's ~~3-percent~~ 5-percent goal.

(h) A disabled veteran business enterprise that fails to maintain the certification requirements set forth in this article shall immediately notify the awarding department and the administering agency of that failure by filing a notice of failure that states with particularity each requirement the disabled veteran business enterprise has failed to maintain.

SEC. 5. Section 999.5 of the Military and Veterans Code is amended to read:

999.5. (a) The administering agency for the California Disabled Veteran Business Enterprise Program is the Department of General Services, except in the case of contracts for professional bond services. The Department of General Services shall consult with the California Disabled Veteran Business Enterprise Program Advocate, appointed by the Secretary of the Department of Veterans Affairs pursuant to Section 999.11, on all matters relating to the California Disabled Veteran Business Enterprise Program. The Director of General Services shall adopt written policies and

1 guidelines establishing a uniform process for state contracting that
2 would provide a disabled veteran business enterprise participation
3 incentive to bidders. The incentive program shall be used by all
4 state agencies when awarding contracts.

5 (b) The Department of Veterans Affairs shall do all of the
6 following:

7 (1) Establish a method of monitoring adherence to the goals
8 specified in Sections 999.1 and 999.2.

9 (2) Promote the California Disabled Veteran Business Enterprise
10 Program to the fullest extent possible.

11 (3) Maintain complete records of its promotional efforts.

12 (4) Establish a system to track the effectiveness of its efforts to
13 promote the California Disabled Veteran Business Enterprise
14 Program, which shall include regular, periodic surveys of newly
15 certified disabled veteran business enterprises to determine how
16 they learned of the program, why they became certified, and what
17 their experience with awarding departments has been.

18 (c) An awarding department shall not credit toward the
19 department's ~~3-percent~~ 5-percent goal state funds expended on a
20 contract with a disabled veteran business enterprise that does not
21 meet and maintain the certification requirements.

22 (d) Upon completion of an awarded contract for which a
23 commitment to achieve a disabled veteran business enterprise goal
24 was made, an awarding department shall require the prime
25 contractor that entered into a subcontract with a disabled veteran
26 business enterprise to certify to the awarding department all of the
27 following:

28 (1) The total amount the prime contractor received under the
29 contract.

30 (2) The name and address of the disabled veteran business
31 enterprise that participated in the performance of the contract.

32 (3) The amount each disabled veteran business enterprise
33 received from the prime contractor.

34 (4) That all payments under the contract have been made to the
35 disabled veteran business enterprise. An awarding department shall
36 keep that certification on file. A person or entity that knowingly
37 provides false information shall be subject to a civil penalty for
38 each violation in the minimum amount of two thousand five
39 hundred dollars (\$2,500) and the maximum amount of twenty-five
40 thousand dollars (\$25,000). An action for a civil penalty under this

1 subdivision may be brought by any public prosecutor in the name
2 of the people of the State of California and the penalty imposed
3 shall be enforceable as a civil judgment.

4 (e) A prime contractor may, subject to the approval of the
5 Department of General Services, replace a disabled veteran
6 business enterprise identified by the prime contractor in its bid or
7 offer, pursuant to subdivision (a) of Section 999.10, with another
8 disabled veteran business enterprise.

9 (f) The administering agency shall adopt rules and regulations,
10 including standards for good faith efforts, for the purpose of
11 implementing this section. Emergency regulations consistent with
12 this section may be adopted.

13 SEC. 6. Section 999.12 of the Military and Veterans Code is
14 amended to read:

15 999.12. Each awarding department shall appoint an agency
16 Disabled Veteran Business Enterprise Program Advocate. This
17 person shall be the same individual appointed pursuant to Section
18 14846 of the Government Code. The agency Disabled Veteran
19 Business Enterprise Program Advocate shall do all of the
20 following:

21 (a) Assist certified disabled veteran business enterprises in
22 participating in that agency's contracting process.

23 (b) Assist contract officers in seeking disabled veteran business
24 enterprises to participate in the agency's contract and procurement
25 activities by performing outreach efforts to recruit disabled veteran
26 business enterprises to offer their services as either a prime
27 contractor or subcontractor on any contract proposed by the
28 awarding department that requires disabled veteran business
29 enterprise participation, and by other feasible means.

30 (c) Meet regularly with the California Disabled Veteran
31 Business Enterprise Program Advocate and contract and
32 procurement staffs of their departments to disseminate information
33 about the California Disabled Veteran Business Enterprise
34 Program.

35 (d) Serve as an advocate for the disabled veteran business
36 enterprises that are utilized as the agency's contractors or
37 subcontractors.

38 (e) Report to the Office of Small Business and Disabled Veteran
39 Business Enterprise Services regarding any violation of this article.

(f) Coordinate and meet, on a regular basis, with the California Disabled Veteran Business Enterprise Program Advocate at the Department of Veterans Affairs in an effort to meet the statewide ~~3-percent~~ *5-percent* goal provided for in Section 999.2.

SEC. 7. Section 1104 of the Military and Veterans Code is amended to read:

1104. (a) Upon appropriation by the Legislature, money in the fund shall be used by the Department of Veterans Affairs for the purpose of designing and constructing veterans' homes in California and completing a comprehensive renovation of the Veterans' Home at Yountville. Funding from this bond shall be allocated to fund the state's matching requirement to construct or renovate those veterans' homes in Section 1011 first, and then fund any additional homes established under this section. These homes shall be in addition to sites authorized under Section 1011.

(b) Notwithstanding any other provision of law, construction contracts awarded for veterans' homes shall have a statewide participation goal of not less than ~~3-percent~~ *5 percent* for disabled veteran business enterprises, as defined in ~~subdivision (g) of~~ Section 999.

SEC. 8. Section 10115 of the Public Contract Code is amended to read:

10115. (a) The Legislature finds and declares all of the following:

(1) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of that competition is basic to the economic well-being of this state and that well-being cannot be realized unless the actual and potential capacity of minority, women, and disabled veteran business enterprises is encouraged and developed. Therefore, it is the declared policy of the state to aid the interests of minority, women, and disabled veteran business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total number of contracts or subcontracts for commodities, supplies, technology, property, and services are awarded to minority, women,

1 and disabled veteran business enterprises, and to maintain and
2 strengthen the overall economy of the state.

3 (2) The opportunity for full participation in our free enterprise
4 system by minority, women, and disabled veteran business
5 enterprises is essential if this state is to attain social and economic
6 equality for those businesses and improve the functioning of the
7 state economy.

8 (3) State agencies which have established short- and long-range
9 minority, women, and disabled veteran participation goals are
10 awarding 23 percent or more of their contracts to these business
11 enterprises.

12 (4) It is in the state's interest to expeditiously improve the
13 economically disadvantaged position of minority, women, and
14 disabled veteran business enterprises.

15 (5) The economic position of these businesses can be improved
16 by providing long-range substantial goals for procurement by state
17 agencies of commodities, professional services, and construction
18 work from minority, women, and disabled veteran businesses.

19 (6) Procurement by state agencies of goods and services from
20 these businesses also benefits the state agencies and the citizens
21 of the state by encouraging the expansion of the number of vendors
22 for procurements, thereby encouraging competition among the
23 vendors and promoting economic efficiency in the process.

24 (b) It is the purpose of this article to do all of the following:

25 (1) Encourage greater economic opportunity for minority,
26 women, and disabled veteran business enterprises.

27 (2) Promote competition among state agencies in order to
28 enhance long-term economic efficiency in the procurement of
29 construction, commodities, and professional services contracts.

30 (3) Clarify and expand the program for the procurement by state
31 agencies of commodities, professional services, and construction
32 work from minority, women, and disabled veteran business
33 enterprises.

34 (c) Notwithstanding any other ~~provision of~~ law, contracts
35 awarded by any state agency, department, officer, or other state
36 governmental entity for construction, professional services (except
37 those subject to Chapter 6 (commencing with Section 16850) of
38 Part 3 of Division 4 of Title 2 of the Government Code), materials,
39 supplies, equipment, alteration, repair, or improvement shall have
40 statewide participation goals of not less than 15 percent for

1 minority business enterprises, not less than 5 percent for women
2 business enterprises and 3 5 percent for disabled veteran business
3 enterprises. These goals apply to the overall dollar amount
4 expended each year by the awarding department, as defined by
5 Section 10115.1, pursuant to this article.

6 SEC. 9. Section 10115.13 of the Public Contract Code is
7 amended to read:

8 10115.13. Notwithstanding any other ~~provision~~ of law,
9 contracts awarded by any state agency, department, officer, or
10 other state governmental entity for the purchase of general public
11 advertisements shall have statewide participation goals of not less
12 than 15 percent for minority business enterprises, not less than
13 five percent for women business enterprises, and ~~three~~ *five* percent
14 for disabled veteran business enterprises. These goals apply to the
15 overall dollar amount expended each year by the awarding state
16 agency, department, offices, or other state governmental entity.

17 SEC. 10. Section 10115.15 of the Public Contract Code is
18 amended to read:

19 10115.15. (a) Notwithstanding Section 10115.2, when
20 awarding contracts for materials, supplies, or equipment, including
21 electronic data processing goods and services, an awarding
22 department shall accept the submission by a bidder of a minority,
23 women, and disabled veteran business enterprise utilization plan
24 that has been approved prior to the solicitation due date by the
25 Department of General Services. A business utilization plan shall
26 be considered approved by the Department of General Services as
27 of the date submitted to the department so long as the plan meets
28 the minimum criteria established in paragraphs (1) to (12),
29 inclusive, and shall be valid for a period of one year, unless the
30 department has audited the utilization plan, as authorized under
31 subdivision (b), and disapproves it for reasons specified under
32 subdivision (c). The decision of whether to establish a minority,
33 women, and disabled veteran business enterprise utilization plan
34 shall be at the option of the vendor. If a bidder cites an approved
35 utilization plan in response to the minority, women, and disabled
36 veteran business enterprise participation requirements of a
37 solicitation that calls for 15 percent minority-owned, 5 percent
38 women-owned, and 3 5 percent disabled veteran-owned business
39 participation, then that utilization plan shall be considered
40 responsive to the participation goals of the solicitation document.

1 If a solicitation specifies higher participation goals than those in
2 the bidder's utilization plan, the bidder shall meet the goals in the
3 solicitation. At a minimum, the utilization plan shall include the
4 following information:

5 (1) A statement of the vendor's minority, women, and disabled
6 veteran business enterprise utilization plan, including the primary
7 objectives of the utilization plan.

8 (2) An explanation showing sufficient business reasons why
9 the vendor did not meet minority, women, and disabled veteran
10 business enterprise participation goals set forth in the vendor's
11 minority, women, and disabled veteran business utilization plan
12 submitted to, and approved by, the Department of General Services
13 in the previous year, if applicable. Further, if the vendor did not
14 meet the minority, women, and disabled veteran business
15 participation goals in the previous year, the vendor shall also
16 identify remedial steps it will take to meet the goals in the current
17 utilization plan.

18 (3) A statement of the vendor's minority, women, and disabled
19 veteran business utilization goals for the succeeding year. At a
20 minimum, these utilization goals shall be equal to the statewide
21 participation goals set forth in subdivision (c) of Section 10115.

22 (4) Estimated total dollars to be subcontracted by the vendor
23 for sales within the United States for the succeeding year.

24 (5) Estimated total dollars to be subcontracted by the vendor
25 for sales within the State of California for the succeeding year.

26 (6) Total dollars expressed as a percentage of the amount
27 estimated pursuant to paragraph (4), intended to be subcontracted
28 with each of the following:

29 (A) Minority business enterprises.

30 (B) Women business enterprises.

31 (7) Total dollars, expressed as a percentage of the amount
32 estimated pursuant to paragraph (5), intended to be subcontracted
33 with disabled veteran-owned business enterprises.

34 (8) A representative listing of the products and services that the
35 vendor anticipates subcontracting, including an identification of
36 the types of subcontracting planned for minority, women, and
37 disabled veteran business enterprises.

38 (9) The name of the individual employed by the vendor who
39 will administer the vendor's utilization plan, including a description
40 of the duties of the individual.

1 (10) A description of the efforts that the vendor will undertake
2 to ensure that minority, women, and disabled veteran business
3 enterprises will have an equitable opportunity to compete for
4 contracts.

5 (11) A listing of the records and reports that the vendor will
6 maintain to demonstrate the practices and procedures that have
7 been adopted to comply with the requirements and goals of the
8 utilization plan.

9 (12) Affirmation that the vendor met the statewide minority,
10 women, and disabled veteran business enterprise utilization goals
11 for the previous year, if applicable.

12 (b) The Department of General Services shall conduct random
13 audits of the submitted utilization plans to determine compliance
14 with this article, and shall retain on file all submitted utilization
15 plans for auditing purposes. During any audit of a submitted
16 utilization plan, the Department of General Services may ask a
17 vendor to submit a list of all the minority, women, and disabled
18 veteran business enterprises included as subcontractors in the
19 vendor's plan for the previous year. This information shall remain
20 confidential. Nothing in this section shall be construed to require
21 the Department of General Services to audit all of the minority,
22 women, and disabled veteran business enterprise utilization plans
23 submitted by individual vendors. The Department of General
24 Services may establish appropriate fees to cover the actual costs
25 of conducting random audits and retaining on file all submitted
26 plans.

27 (c) (1) At any time, the Department of General Services may
28 disapprove a vendor's minority, women, and disabled veteran
29 business enterprise utilization plan for any of the following reasons:

30 (A) The utilization plan fails to evidence a vendor's intention
31 to comply fully with the statewide minority, women, and disabled
32 veteran business enterprise goals for the succeeding year, as
33 indicated by failure of the utilization plan to contain the information
34 specified in subdivision (a).

35 (B) The utilization plan fails to evidence sufficient business
36 reasons for failure to achieve the minority, women, and disabled
37 veteran business enterprise goals set forth in a utilization plan
38 submitted in the previous year, if applicable.

39 (C) The utilization plan fails to evidence sufficient remedial
40 steps the vendor will take if the vendor did not meet the minority,

1 women, and disabled veteran business participation goals in the
2 previous year, if applicable.

3 (2) If a vendor's utilization plan is disapproved, the vendor may
4 not submit a new utilization plan to the department for a period of
5 one year from the date of disapproval. Prior to disapproval of a
6 vendor's utilization plan, the vendor shall be entitled to a public
7 hearing and to five days' notice of the time and place thereof. The
8 notice shall state the reasons for the hearing.

9 (3) A vendor that submits a minority, women, and disabled
10 veteran business utilization plan that is approved by the Department
11 of General Services, and that is subsequently awarded a contract
12 to which the vendor would not otherwise have been entitled, and
13 who fails to evidence intention to fully comply with the minority,
14 women, and disabled veteran business enterprise goals in the
15 utilization plan, or fails to evidence sufficient business reasons for
16 failing to achieve the minority, women, and disabled veteran
17 business enterprise goals set forth in the utilization plan, shall:

18 (A) Pay to the state any difference between the contract amount
19 and what the state's cost would have been if the contract had been
20 properly awarded.

21 (B) In addition to the amount specified in subparagraph (A), be
22 assessed a penalty in an amount of not more than 10 percent of
23 the amount of the contract involved.

24 (C) Be ineligible to transact any business with the state for a
25 period of not less than three months and not more than 24 months.

26 Prior to imposition of any sanction under this chapter, the
27 contractor or vendor shall be entitled to a public hearing and to
28 five days' notice of the time and place thereof. The notice shall
29 state the reasons for the hearing.